

NO. 44496-8-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

STATE OF WASHINGTON,

Respondent,

v.

JOSE LUIS CASTANEDA ORTIZ,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR PIERCE COUNTY

APPELLANT'S REPLY BRIEF

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A. ARGUMENT IN REPLY

The trial court incorrectly denied Mr. Castaneda Ortiz's motion to withdraw his guilty plea where it was involuntary due to both misinformation and coercion.

Jose Castaneda Ortiz entered a guilty plea only after he was misinformed as to the term of community custody that could be imposed and coerced into believing it would affect his son's release from prison on related charges. He was sentenced to an illegal term based on the same misinformation about community custody. The sentencing court violated RCW 9.94A.701(9), which requires the sentencing court to reduce the term of community custody if would exceed the statutory maximum when combined with the term of incarceration. Because misinformation as to a direct consequence of a plea and coercion each render a plea involuntary and because an involuntary plea constitutes a manifest injustice warranting withdrawal of the plea under Criminal Rule (CrR) 4.2(f), the trial court acted contrary to the law in denying Mr. Castaneda Ortiz's motion to withdraw his plea. *See State v. Mendoza*, 157 Wn.2d 582, 591, 141 P.3d 49 (2006) (defendant may withdraw plea if misinformed about direct consequences); *In re Pers. Restraint of Isadore*, 151 Wn.2d 294, 298-302, 88 P.3d 390 (2004) (misinformation about community

custody renders a plea involuntary and subject to withdrawal); *State v. Wakefield*, 130 Wn.2d 464, 472, 474-75, 925 P.2d 183 (1996) (trial court must permit withdrawal of a guilty plea that was entered involuntarily); *State v. Osborne*, 102 Wn.2d 87, 97, 684 P.2d 683 (1984) (coercion renders plea involuntary).

In response, the State argues Mr. Castaneda Ortiz applies the wrong test on review. Resp. Br. at 4-5. But Mr. Castaneda Ortiz's argument prevails even under the lens through which the State elects to view it. *See id.* Mr. Castaneda Ortiz filed a motion to withdraw his guilty plea, which is governed by CrR 4.2. CP 77-111; *see* Resp. Br. at 2 & n.2 (concurring that the relevant motion was to withdraw the plea). Criminal Rule 4.2(f) requires a trial court to allow a defendant to withdraw a guilty plea to correct a "manifest injustice." CrR 4.2(f); *Mendoza*, 157 Wn.2d at 587. A manifest injustice results if the defendant's plea was involuntary. *Isadore*, 151 Wn.2d at 298. A plea is involuntary if it followed misinformation about sentencing consequences, such as community custody. *Id.* Mr. Castaneda Ortiz's plea was involuntary because it was based on misinformation about the term of community custody that could be imposed. Op. Br. at 5-7. Because it was involuntary, upon Mr. Castaneda Ortiz's motion, the

plea should have been withdrawn to correct this manifest injustice. *Wakefield*, 130 Wn.2d at 472 (“trial court must permit the withdrawal of a guilty plea ‘to correct a manifest injustice.’” (quoting CrR 4.2); Op. Br. at 7-10. Accordingly, the trial court acted incorrectly, and abused its discretion, in denying Mr. Castaneda Ortiz’s motion to withdraw his plea. The involuntariness of Mr. Castaneda Ortiz’s plea is entirely relevant, regardless of how this claim arose. *Cf. Isadore*, 151 Wn.2d at 298, 302-03 (evaluating voluntariness of plea where error was raised in personal restraint petition).

The State also argues that Mr. Castaneda Ortiz must satisfy CrR 7.8 in addition to CrR 4.2(f)’s manifest justice requirement. Resp. Br. at 9-12. It appears the State contends this rule applies to only to Mr. Castaneda Ortiz’s argument that the plea was coerced. Resp. Br. at 11-16 (applying CrR 7.8 only to coercion argument). However, regardless of the reach of the State’s argument, even the case law relied on by the State makes clear that Mr. Castaneda Ortiz has satisfied CrR 7.8. Resp. Br. at 9 (citing *State v. Olivera-Avila*, 89 Wn. App. 313, 949 P.2d 824 (1997)). *Olivera-Avila* holds that a plea based on misinformation about community custody is void within the meaning of CrR 7.8(b)(4). 89 Wn. App. at 317-19. In fact, a plea obtained in violation of due

process, such as an involuntary coerced plea, is always void within the meaning of CrR 7.8(b)(4). *Id.* at 319 (citing *State v. Ross*, 129 Wn.2d 279, 284, 916 P.2d 405 (1996)). The State's argument that CrR 7.8 applies is without import because Mr. Castaneda Ortiz's motion easily satisfies that rule.

On the merits, the State argues that Mr. Castaneda Ortiz's plea was not based on misinformation because the law changed after he entered his plea. Resp. Br. at 5-8. The argument is wrong. Our Supreme Court's decision in *State v. Boyd* did not change any law or rule. *State v. Boyd*, 174 Wn.2d 470, 275 P.3d 321 (2012). *Boyd* merely interpreted RCW 9.94A.701(9), on its plain language, and consistent with the Court's prior decision in *State v. Franklin*, 172 Wn.2d 831, 839-41, 263 P.3d 585 (2011). Contrary to the State's argument, it should have been clear at the time of Mr. Castaneda Ortiz's plea and sentencing that "following the enactment of this statute [in 2009], the 'Brooks notation' procedure no longer complies with statutory requirements." *Boyd*, 174 Wn.2d at 472; see Resp. Br. at 6-7 (arguing it was proper to rely on the *Brooks* notation at the time of the plea here). The statute requiring the sentencing court to sentence Mr. Castaneda Ortiz to a combined term of incarceration and community

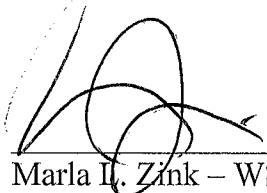
custody not to exceed the statutory maximum was in effect at the time of the plea and sentence. RCW 9.94A.701(9). The explanation by the prosecutor, and the court, as well as the court's actual sentence and the information in the plea agreement, did not comport with the law at the time. It was misinformation. Consequently, this misinformation entitles Mr. Castaneda Ortiz to withdraw his plea.

B. CONCLUSION

Mr. Castaneda Ortiz's plea was involuntary. He was misinformed about a direct consequence, the term of community custody, and the plea was coerced by Mr. Castaneda Ortiz's concern for the early release of his son. This Court should reverse the trial court's denial of his motion to withdraw the unconstitutional, involuntary plea and remand to allow Mr. Castaneda Ortiz to withdraw his plea.

DATED this 6th day of August, 2014.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Marla L. Zink', is written over a horizontal line.

Marla L. Zink – WSBA 39042
Washington Appellate Project
Attorney for Appellant

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JOSE ORTIZ,)	
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